



Office of the Attorney General

State of Texas

September 16, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Kevin T. O'Hanlon
Chief Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR92-547

Dear Mr. O'Hanlon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17079.

You have received a request for a copy of a draft agreement between the Ysleta Independent School District and the Texas Education Agency and claim that it is excepted from required public disclosure under section 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990) at 2; 470 (1987) at 6. Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990).

You advise us that the negotiations concerning the requested draft agreement are in their preliminary stage and that the draft agreement is subject to change. We conclude that the requested information constitutes the advice,

opinion, and recommendation of the drafter and may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-547.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 17079

cc: Mr. John M. Rooney
3400 Proud Eagle Drive
El Paso, Texas 79936